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DLA PIPER US LLP ATTN: PATENT GROUP 500 8th Street, NW WASHINGTON, DC 20004-2131			TINKLER, MURIEL S	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/924,971

Filing Date: August 09, 2001

Appellant(s): NATHANS ET AL.

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James M. Heintz  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 11, 2008 appealing from the Office action mailed June 15, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6088686	Walker et al.	7-2000
6,049,784	Weatherly et al.	4-2000
6,587,841	DeFrancesco et al.	7-2003
6,112,190	Fletcher	8-2000
6,527,885	Johnson	6,527,885

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 4, 5, 6, 8, 19 and 20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Walker et. al. (US 6,088,686) in view of Weatherly et. al. (US

6,049,784).

5. Claim 1 discusses a system for collecting and distributing credit information comprising: a repository database having stored therein credit information related to residential housing credit payments made by a plurality of consumers; a repository management computer connected to the repository database, the repository management computer being configured to input residential housing credit payment data pertaining to a plurality of consumers from a payment processor computer and to store the residential housing credit payment data in the repository, the repository management computer being further configured to release credit information from the repository database for a particular consumer to an authorized residential housing credit provider upon receiving a request from the authorized residential housing credit provider and a corresponding authorization from the particular consumer. Walker discloses on page 3 and lines 20-22 of the specification, "The present invention provides an expeditious manner in which consumer retail branches can provide an immediate credit

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evaluated response." Walker discloses on page 8 and lines 28-36, "An applicant's good credit experience, monthly income and monthly debt payments (incorporating estimated monthly payment associated with the newly requested debt) are systematically evaluated upon transmission of credit request... This process primarily uses monthly credit bureau information, including mortgage payments."

6. Walker does not specifically discuss the authorization and release of information to a third party or using this database for residential housing credit payment information. Weatherly discloses the authorization and release of information to a third party in column 4 (lines 25-27), "Once the information is provided, the landlord verifies that the tenant has signed the application and authorized the financial institution to review the prospective tenant's history." Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Walker to include (instead of a system as the 'intermediary') a financial institution because the use of a financial institution as an intermediary is old and well known in the art (see the Background Section of Walker, column 1, lines 16-33).

7. Weatherly teaches using a computer to store information for housing lease agreements and obtaining approval from the lessee on: page 2 and lines 20-29, "Preferably, the method for creating and managing a lease agreement includes the step of entering data relevant to the lessee, the lessor, the lease agreement and the service product into a computer preprogrammed for account control. It is further preferred that the present invention include the step, to be performed upon acceptance of the service product by the lessor and the lease agreement by the lessee and the lessor, as well as

the lease control intermediary, of monitoring periodic lease payment activity by the lessee using the computer"; and on page 3 and lines 50-52 of the specification, "This embodiment of the invention is particularly useful for housing arrangements such as rental apartments and rental houses." Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Walker's retail credit database according to Weatherly for use in credit checks for retail housing agreements the expedite the credit checks and obtain preliminary approvals for credit.

8. Claim 4 discusses the system of claim 1, wherein the repository management computer is connectable to receive card reader data and configured to require that data received from the card reader match card data associated with the particular consumer before releasing credit information to the residential housing credit provider. Claim 1 has been rejected based on the discussions above. Walker discusses on page 1 and lines 55-66 of the specification, "The present invention is therefore directed to the problem of developing a method and system for performing credit and liability reviews that provide an interface to service bankcard products." Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to process data from a card to allow payments to me made right away.

9. Claim 5 discusses the system of claim 1, wherein the credit information is released in the form of a score based at least in part upon the payment data. Claim 1 has been rejected based on the discussions above. Walker discloses on page 14 and lines 47-52 of the specification, "Using parameters and rules configured on Product Maintenance-8 (PM8) (shown in FIG. 9), a scoring response code is assigned to the

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application (FIG. 42 block 2052). If this score is less than or equal to the turndown cutoff value (YES branch from block 2054), the application status is changed to "RT"--Recommend Turndown." Therefore it would have been obvious to a person having ordinary skill in the art to implement a scoring procedure for the credit database to make it easier to process a pass/fail for the consumer.

10. Claims 6 and 8 discuss the system of claims 1 and 5, wherein the score is further based at least in part on retail credit data. Claims 1 and 5 have been rejected based on the discussions above. Walker discloses on page 2 and lines 16-20, "According to the present invention, specifically for credit requests, the system immediately analyzes an applicant's credit bureau history, automated credit scoring, credit policies and the applicant's new or existing relationship with the financial institution, if any, and provides these results to the LBR in a summarized format." Therefore it would have been obvious to a person having ordinary skill in the art to use retail credit data to determine score because it give a more accurate history of the clients overall credit worthiness.

11. Claim 19 discusses the system of Claim 1, wherein actual payment dates and amounts for a plurality of payments are stored in the repository. Walker does not disclose this. Weather teaches this in column 3 and lines 14-45, "It is further preferred that the step of monitoring periodic lease payment activity includes entering account information regarding the lessee, the lessor, the lease agreement and the service product into a computer; noting dates associated with actual payments and expected payments; designating accounts with payments past due for five days..." Therefore, it would have been obvious to a person having ordinary skill in the art at the time the

application was made to modify Walker to include actual payment dates and amounts of payments made to provide a more detailed description of events occurring.

12. Claim 20 discusses the system of Claim 19, wherein credit information released to the third party includes the actual payment dates and amounts for the plurality of payments stored in the repository. Claim 19 has been rejected based on the discussion(s) above. Weather further teaches the information in Claim 20 in column 4 (lines 12-33, "...tenant provides financial institution with the required information to perform credit check and other financial information necessary...") and column 6 (lines 24-63, "... generate a letter to the landlord...").

13. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker and Weatherly as applied to claim 1 above, and further in view of DeFrancesco et. al. (US 6,587,841).

14. Claims 2 and 3 discuss the system of claim 1, wherein the repository management computer is configured to require a password and personal identification number from the particular consumer before releasing the credit information. Claim 1 has been rejected based on the discussions above. Walker and Weather discuss the information in claim 1. Walker and weather do not specifically discuss using a password and personal identification number on the computer. DeFrancesco teaches the use of a password and pin number for a computer implemented automated credit application system on page 8 and lines 30-33 of the specification, "It is an object of the present invention to provide a centralized enrollment and billing process, that is, a process for activating and enrolling a dealer, bank, or other user, with a password and ID."

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the credit system used by Walker and Weatherly by using DeFancesco's pin and password protection because it will help prevent identity theft.

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker, Weatherly, and DeFancesco as applied to claim 6 above, and further in view of Fletcher et. al. (US 6,112,190). 10. Claim 7 discusses the method of claim 6, wherein the housing credit data is more heavily weighted than the retail credit data. Claim 6 has been rejected based on the discussions above. Fletcher teaches weighting values to determine the eligibility of a loan on page 3 and lines 1-3 of the specification, "It is a further object of the present invention to use automatically an evidence tree analysis method with weights for different nodes and factors in the evidence tree." Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to weight the various factors of the application and that housing credit data should be more heavily weighted than retail data because the database is for use in housing credit data and weighting the elements of the application will allow for a more accurate evaluation of the potential for housing payments.

16. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker and Weatherly as applied to claim 1 above, and further in view of Johnson (US 6,527,885).

17. Claim 18 discusses the system of claim 1, wherein the payment processor computer provides the consumer with an option to designate a payment to be held in

escrow. Claim 1 has been rejection based on the discussions above. Walker and Weatherly do not disclose the use of an escrow account. Johnson teaches using an escrow account on page 3 and lines 56-61 of the specification, "Independent escrow companies typically require credit card payments, which payments are held in escrow pending release of a timed contingency or by a specific action by the purchaser." Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use an escrow account to provide ease of use, security and to positively identify the customer.

#### **(10) Response to Argument**

1. Applicant's arguments filed January 11, 2008 have been fully considered but they are not persuasive. The Applicant argues on page 4, "Furthermore, claim 1 specifies the condition under which the data is collected – the data must be collected 'from a payment processor' and must be distributed to 'a third party' and only when a 'corresponding authorization from the particular consumer' is provided. The third party is neither the payee nor the payor nor an entity associated with the system. The Examiner disagrees. The last limitation of claim 1 states, "to release credit information indicating a timeliness of payments from the repository database for a particular consumer to a third party upon receiving a request from the third party and a corresponding authorization from the particular consumer." The third party requests information from the database and the database sends the third party the data; therefore, the third party is associated with the system. Furthermore, the term 'third

party' is not defined in the specification. The Examiner defines the third party as a financial institution or bank.

2. The Applicant argues that the monthly debt payments and mortgage payments recited in the Walker passage (column 8, lines 28-36) refer to payments that must be made by the applicant in the future, not to past payment data. The Examiner disagrees. The passage recites, "An applicant's good credit experience, monthly income and monthly debt payments (incorporating estimated monthly payment associated with the newly requested debt)... This process primarily uses monthly credit bureau information, including mortgage payments, which allows a Maximum Debt Burden Offer..."

3. The Applicant argues that, in Walker, the credit bureau information is not collected from a payment processor. The Examiner disagrees. Walker discusses a computerized system operating in real time and processing information in the Abstract.

4. The Applicant argues that Walker AND Weatherly: do not disclose the reporting of payment data to any third party; discloses storing (not reporting) of data by a payment processor (the intermediary); releasing credit information to a third party upon receiving 'a corresponding authorization from the particular consumer'. The Examiner disagrees. Weatherly discloses the authorization and release of information to a third party in column 4 (lines 25-27), "Once the information is provided, the landlord verifies that the tenant has signed the application and authorized the financial institution to review the prospective tenant's history."

5. The Applicant argues that there is no rationale for combining the Walker and Weatherly references because Weatherly is directed toward a system that is unrelated

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to extending credit but rather is concerned with a system used by a guarantor of lease payments. The Examiner disagrees. Both systems disclose the act of providing predetermined financial information through a payment processing system (see the Abstract of Weatherly and the Abstract of Walker).

6. The Applicant argues that the weighting for different nodes and factors discussed in cited passage of Fletcher is not weighting credit data from different types of loans separately. The Examiner agrees. However claims 7 states, "The method of claim 6, wherein the repository further contains retail credit payment data." There is not discloses in claim 7 that the retail credit data must be from different types of loans separately.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/M. T./

Examiner, Art Unit 3691

/Alexander Kalinowski/

Supervisory Patent Examiner, Art Unit 3691

Conferees:

/A.K./ Alexander Kalinowski

Supervisory Patent Examiner, Art Unit 3691

/H. K./

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